Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket No. 92-77
	)	

REPLY COMMENTS OF
COMMUNICATIONS CENTRAL INC.

Communications Central Inc.
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August 16, 1996

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SUMMARY

In its Second Further Notice of Proposed Rulemaking in this docket, the Commission expresses its intention to further consider BPP on the premise that BPP's prohibitive cost would be diminished with the advent of local number portability. As explained in numerous RBOC comments, that premise is incorrect because BPP would not be provided through the number portability database. Accordingly, there is no basis for further consideration and the BPP concept should be terminated.

Should the Commission determine that rate benchmarks for OSPs are appropriate, the benchmarks must be at the level proposed by the Industry Coalition. Rate benchmarks based on the rates charged by AT&T, MCI and Sprint would fail to address the varying costs and economies of scale of other carriers. However, should the Commission reject the Industry Coalition proposal, an additional price margin is reasonable and justifiable.

Because of increased costs and delays in call processing, requiring a rate disclosure on every call is not in the public interest. Rate disclosures should only be required on call charges that exceed benchmark rates.

Ultimately, the Commission's actions must balance the need for fair rates for consumers with the need for fair compensation for PSPs. Only then can the public interest be served by ensuring the widespread deployment of payphones for public use.

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Communications Central Inc. ("CCI") hereby replies to Comments filed in the Second Further Notice of Proposed Rulemaking, FCC No. 96-253, released by the Federal Communications Commission (the "Commission") on June 6, 1996 ("Notice").

I. THE COMMISSION SHOULD END ITS CONSIDERATION OF BILLED PARTY PREFERENCE ("BPP")

The Commission stated in its Notice that "the cost of BPP would likely be substantial." (Notice at ¶4.) Comments filed by the APCC clarified that implementing BPP would, in fact, impose extraordinarily high costs, some *$1.5 billion per year*, and would not produce benefits worth more than $221 million per year.[1] The record in this docket is replete with evidence that the cost of BPP far outweighs any purported benefit.

While acknowledging the prohibitive expense of BPP, the Notice went on to state that the Commission intends

> to give further consideration to BPP as local number portability develops... If local exchange carriers are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide. (Notice at ¶4.)

Further consideration of BPP on this basis is not warranted. As explained in joint comments filed by Bell Atlantic, BellSouth and NYNEX, "BPP would not be provided through the number portability database, and number portability, therefore, would not reduce the number of database inquiries for BPP."[2] U S West also stated that the Commission's assumption that BPP might become simply an incremental cost, riding on the number portability investment, is incorrect.[3] Even Ameritech, the lone RBOC still supporting BPP, commented that local number portability will not lessen the cost of BPP.[4]

In addition to the economic infeasibility of BPP, its primary objective of allowing consumers to use their carrier of choice has already been met under TOCSIA.[5] Thus there is not a single reason for further consideration of BPP. As stated in the Bell Atlantic joint comments, "Billed party preference was an interesting idea that proved to be too expensive and, ultimately, unnecessary. Both

technology and the marketplace passed it by."[6] Southwestern Bell, which originally supported BPP, concluded that "the time for BPP has come and gone and the issue should now be closed."[7]

II. RATE BENCHMARKS

A. IF RATE BENCHMARKS ARE ADOPTED, THE INDUSTRY COALITION PROPOSAL SHOULD BE USED

If the Commission imposes rate benchmarks, CCI maintains that the appropriate levels are those proposed by the Industry Coalition[8] (also referred to in comments as the "CompTel Coalition") rather than those proposed in the Notice, which are based on rates of AT&T, MCI and Sprint (the "Big Three"). As Cleartel/ConQuest observed, the Industry Coalition level "is consistent with costs and revenues among a large cross-section of OSPs ... [and] is nondiscriminatory because the proposal would apply universally to *all* OSPs, regardless of size."[9]

The proposal by the Industry Coalition was based on levels above which a substantial number of complaints occurred. CCI supports U S West's position that the Industry Coalition proposal is appropriate because "[T]here is no clearer demonstration of the outer boundaries of customer 'expectations' than the taking of affirmative action to complain about assessed charges. Below that

level, it is all a matter of generalization, averaging and speculation."[10]

The unsuitability of basing a rate benchmark on the Big Three rates was commented on not only by independent payphone providers and OSPs, but by a broad-based segment of the industry. AT&T stated that it "does not support the establishment of 'benchmark' rates based upon the charges of any specific carrier or small group of carriers, because such carriers' rates may not be reflective of the costs of other carriers."[11] That viewpoint was echoed by ACTA, which commented that "The Commission's intent to rely on the Big Three's rates to establish publicly acceptable rates ... ignores the differing underlying costs borne by smaller carriers and the economic disparities which exist between the Big Three carriers and all other OSPs."[12] Bell Atlantic, BellSouth and NYNEX also shared this view, stating that:

> The benchmark proposed by the Industry Coalition was designed to deal with the problem identified by the Commission -- prices for OSP services that the public believes are too high. It does this directly, by determining what prices have generated consumer complaints to regulatory agencies. It is broadly based, taking into account prices charged by *all* OSPs and the perceptions of all users of OSP services."[13]

B. IF THE INDUSTRY COALITION PROPOSAL IS REJECTED, AN ADDITIONAL PRICE MARGIN IS REASONABLE AND JUSTIFIABLE

CCI reiterates that a rate benchmark, if adopted, should be at levels proposed by the Industry Coalition. Nevertheless, should the Commission decide that a rate benchmark based on the rates of the Big Three is appropriate, an additional price margin would be reasonable and justified. However, the 15 percent price margin mentioned in the Notice is not sufficient and does not allow for differences in underlying costs.[14] CCI supports the Illinois Public Telecommunications Association's ("IPTA's") position that "A rate of 15% as suggested by the Second Further Notice, would be unduly prejudicial to the small carriers ... and does not adequately account for the different costs incurred by the small OSPs, and the extent to which AT&T, MCI and Sprint take advantage of their market dominance."[15]

CCI notes that both ACTA and Opticom recommend that a more reasonable price margin would be two to three times the benchmark rates. ACTA states that "A proper level of variance, to provide needed pricing flexibility, is at least two to three times that of the Big Three Benchmark carriers."[16] Opticom believes that "At a minimum, the Commission should consider adopting a variance that is two to three times the benchmark rates adopted by the Commission."[17] Since both of these commenters have knowledge of rating principles

from a provider's perspective, CCI encourages the Commission to carefully consider their recommendations.

CCI supports the IPTA position that "The rate of 115 percent suggested by the Second Further Notice (Second Further Notice ¶24) does not adequately account for the different costs incurred by the small OSPs, and the extent to which AT&T, MCI and Sprint take advantage of their market dominance."[18]

III. RATE DISCLOSURES SHOULD ONLY BE REQUIRED FOR CALL RATES THAT EXCEED BENCHMARK RATES

As stated above and in many of the comments filed in response to the Notice, the rate disclosure mechanism currently in effect under TOCSIA, which requires OSPs to disclose their rates upon request and at no charge to the consumer, fulfills the Commission's objective of providing rate disclosures. To impose other rate disclosure requirements would necessitate expensive payphone equipment upgrades, increase carriers' costs and result in delays in call processing.

In addition to its concerns over consumer inconvenience and increased carrier costs resulting from a rate disclosure requirement for all 0+ calls, AT&T cites a logistical barrier: OSPs are unable to determine whether a customer has dialed a call on a 0+ or a 10XXX access code basis.[19] Intellicall, a leading provider

of pay telephone equipment, cites another logistical barrier: intelligent pay telephones such as those manufactured by Intellicall are not technically capable of offering a specific per-call automatic rate quote, and there is no feasible way of adding such capability.[20]

Should the Commission decide, however, that an approach requiring rate disclosures is necessary, CCI strongly advocates the position expressed by the vast majority of commenters: rate disclosures should only be required for those call rates which exceed the benchmark. As stated in the joint comments of Bell Atlantic, BellSouth and NYNEX, "[D]isclosure should be necessary only on calls that exceed the benchmark. Requiring disclosure on all calls would defeat the purpose of the benchmark/disclosure process, would impose costs on OSPs with reasonable prices and would inconvenience and annoy the very consumers the Commission seeks to protect."[21]

IV. THE COMMISSION MUST PROVIDE FAIR COMPENSATION FOR PAYPHONE SERVICE PROVIDERS IN CONJUNCTION WITH ANY ACTION ON RATES

The Commission released its Notice in this proceeding, regarding end user rates, simultaneously with its Notice in Docket No. 96-128,[22] regarding the Commission's mandate to ensure that payphone service providers ("PSP"s) are compensated for virtually

every intrastate and interstate call made from their payphone instruments. CCI believes that the simultaneous release of these Notices shows the Commission's commitment to balance the needs of callers with those of the competitive PSP industry.

The correlation between interstate rates and intrastate compensation is detailed in comments filed by the New Jersey Payphone Association ("NJPA") and the Illinois Public Telecommunications Association ("IPTA"). The NJPA notes that a crucial element in interstate rates charged by PSPs is the lack of fair compensation to the PSP at the state level. The devastating effect of a rate benchmark that fails to address the underlying causes of higher rates is candidly depicted by the NJPA: New Jersey's independent payphone providers will be forced to leave the market and the number of payphones available to the public will be significantly reduced.

CCI strongly supports the IPTA's recommendation that "[T]he Commission should make every effort to coordinate the rules ultimately adopted here, with the rules adopted in CC Docket No. 96-128; more specifically, these rate ceilings should not become effective until the Commission implements its rules adopted in CC Docket No. 96-128."[23]

CCI further supports the APCC's observation that "[T]he question to be addressed by the Commission involves how to ensure

overall recovery by PSPs, on all calls, of sufficient revenue to enable competitors to supply the nation with high quality payphones in the quantities needed to serve the public interest."[24] As CCI discussed in its original comments, Commission action to mandate reasonable and compensatory rate benchmarks which meet consumer expectation can effectively balance the needs of the parties only if compensation for each and every call is provided, thus ensuring the widespread deployment of payphones for the public benefit.

RESPECTFULLY SUBMITTED,

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1. Comments of the American Public Communications Council ("APCC") on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996) at 12, citing Jackson & Rohlfs, "Quantifying the Costs of Billed Party Preference," dated September 14, 1994.

2. Comments of Bell Atlantic, BellSouth and NYNEX (the "Bell Atlantic joint comments") on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 9.

3. Comments of U S West, Inc. on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 12, 13.

4. Comments of Ameritech on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 2.

5. Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), Pub. L. No. 101-435, § 3, 104 Stat. 987 *amended* 101-555, § 4, 104 Stat. 2760 (1990) *codified at* 47 U.S.C. § 226.

6. Comments of Bell Atlantic, BellSouth and NYNEX on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 9.

7. Comments of Southwestern Bell Telephone Company on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 2.

8. Competitive Telecommunications Association, et al., Ex Parte Communication, CC Docket No. 92-77 (March 8, 1995).

9. Comments of Cleartel/ConQuest on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 11, emphasis in original.

10. Comments of U S West, Inc. on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 3.

11. Comments of AT&T Corp. on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 2, citing its previous Comments.

12. Comments of America's Carriers Telecommunication Association ("ACTA") on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 2, emphasis in original.

14. See, Comments of One Call Communications, Inc. d/b/a Opticom on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 7; and, Comments of ACTA, at 5.

15. Comments of Illinois Public Telecommunications Association on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 18, 1996), at 10, 11.

16. Comments of ACTA on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 5.

17. Comments of One Call Communications, Inc. d/b/a Opticom on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 7, citing 1995 Mich. Pub. Acts § 317(6) (Nov. 30, 1995) (capping operator services or toll services at 3 times the state average rate).

18. Comments of the Illinois Public Telecommunications Association on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 18, 1996), at 11.

19. Comments of AT&T Corp. on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 5.

20. Comments of the Intellicall Companies on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 7.

21. Comments of Bell Atlantic, BellSouth and NYNEX on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 5.

22. In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (Rel. June 6, 1996).

23. Comments of the Illinois Public Telecommunications Association filed July 18, 1996 at 11.

24. Comments of the American Public Communications Council on Second Further Notice of Proposed Rulemaking, CC Docket 92-77 (July 17, 1996), at 9.